

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

EDWARD GERMAIN SAUNDERS, JR.,)	
Petitioner,)	Civil Action No. 7:14cv00395
v.)	
COMMONWEALTH OF VIRGINIA,)	<u>MEMORANDUM OPINION</u>
Respondent.)	
	By: Michael F. Urbanski
	United States District Judge

Petitioner Edward Germaine Saunders, Jr., a Virginia inmate proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his convictions in the Roanoke City Circuit Court on the basis that counsel provided ineffective assistance. The court finds that Saunders did not fully exhaust his state court remedies before filing this federal habeas petition and, therefore, will dismiss this action without prejudice.

I.

On January 19, 2012, the Roanoke City Circuit Court convicted Saunders of abduction with the intent to defile, in violation of Virginia Code § 18.2-48 and sentenced Saunders to 45 years incarceration, with 44 years and 5 months suspended. Saunders appealed and the Court of Appeals and Supreme Court of Virginia denied his appeals. While his appeals were pending, Saunders also filed a motion to withdraw his plea in the Roanoke City Circuit Court, which the court denied on February 8, 2012. Saunders has not yet filed a petition for writ of habeas.

II.

A federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which he was convicted. Preiser v. Rodriguez, 411 U.S. 475 (1973). If the petitioner has failed to exhaust state court remedies, the federal court must dismiss the petition. Slayton v. Smith, 404 U.S. 53 (1971). In Virginia, a non-death row

felon ultimately must present his claims to the Supreme Court of Virginia and receive a ruling from that court, before a federal district court may consider his claims. See Va. Code § 8.01-654. In this case, it is clear that Saunders has yet to pursue his ineffective assistance of counsel claims in the Supreme Court of Virginia. Accordingly, the court finds that Saunders' petition is unexhausted.

III.

Based on the foregoing, I will dismiss Saunders' habeas petition, without prejudice, as unexhausted.

Entered: October 14, 2014

Michael F. Urbanski

Michael F. Urbanski
United States District Judge